



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0769

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114589.

The City of Houston (the "city") received a request for the payroll records demonstrating regular pay and overtime pay for a particular police officer, his applications for extra employment, and all documents regarding any complaints filed against the officer. You assert that the requested information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code.¹

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be

¹You make no arguments showing the applicability of section 552.108 to the requested information; therefore, we will not consider the exception in this ruling. See Gov't Code § 552.301.

a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

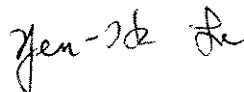
You have submitted an affidavit from the Harris County District Attorney's Office which avers that a criminal case is pending in the 182nd District Court, and that the requested information is related to the pending case. The affidavit further states that the prosecutor seeks to withhold the information because of the pending case. After reviewing the information and your arguments, we conclude that you have shown that litigation is pending and that some of the requested information relates to pending litigation. However, you have not shown how the payroll records and the applications for extra employment relate to the pending litigation. Therefore, except for the payroll records and applications for extra employment, you may withhold the remaining requested information under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Lastly, we note that the payroll records and applications for extra employment contain the police officer's social security number, home address, and home telephone number. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information whether the peace officer has family members. Thus, you must withhold from the payroll records information excepted by section 552.117(2).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 114589

Enclosures: Submitted documents

cc: Mr. David Gerger
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(w/o enclosures)